

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

|                                     |   |                               |
|-------------------------------------|---|-------------------------------|
| In re Application of:               | ) |                               |
|                                     | ) | Examiner: <b>J. Mooneyham</b> |
| Pasquale A. <b>PATULLO</b> , et al. | ) |                               |
|                                     | ) | Group Art Unit: <b>3629</b>   |
| Application No.: <b>09/828,437</b>  | ) |                               |
|                                     | ) | Appeal No. _____              |
| Filed: <b>April 6, 2001</b>         | ) |                               |
|                                     | ) | Confirmation No.: <b>6173</b> |
| For: <b>RESERVATION SYSTEM</b>      | ) |                               |
|                                     | ) | Date: <b>August 29, 2006</b>  |
|                                     | ) |                               |
|                                     | ) |                               |
|                                     | ) |                               |

**REPLY BRIEF**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The present Reply Brief is being filed in response to the Examiner's Answer mailed June 29, 2006.

**I. SUMMARY OF ARGUMENTS**

For the convenience of the Board, a summary of the Appellant's arguments in reply to the Examiner's Answer is provided below. The following arguments are discussed in greater detail in the following sections.

**A. Rejection of Claims 1-12 and 25-27 Under 35 U.S.C. §102(b) as Allegedly Being Anticipated By Lynch.**

These claims recite the feature of, for example, means for determining whether the

user is a direct customer or a travel agent, as recited in at least independent claim 1, among others. Lynch fails to disclose at least the claim feature of means for determining whether the user is a direct customer or a travel agent. The Examiner argues that decision engine (16) of Fig. 3 (106), as disclosed by Lynch, at column 5, lines 31-35, teaches the Appellant's claimed feature, but is unsuccessful in that Lynch teaches determining the identity of the traveler, the business entity that employs the traveler (if applicable), and the travel agency of which the individual is a customer (if applicable). Lynch, in other words, *presumes* the user is a travel agent and that the traveler is associated with the travel agent, instead of determining whether the user is a direct customer or a travel agent.

**B. Rejection of Claims 1-28 Under 35 U.S.C. §103(a) as Allegedly Being Unpatentable Over Jones In View of Among.**

These claims recite the feature of, for example, means for determining whether the user is a direct customer or a travel agent. The Examiner admits that Jones fails to disclose at least the claim feature of determining whether the user is a direct customer or a travel agent. Without support of any kind, the Examiner asserts that Among discloses the feature of determining whether the user is a direct customer or a travel agent. The Examiner asserts that because Among discloses a step of determining who the user is, determining if a passenger is identified as being qualified for special pricing and automatically applying a rate if qualified, as well as other irrelevant features, that Among therefore discloses the step of determining whether the user is a direct customer or a travel agent. Furthermore, the Examiner has made no showing, whatsoever, of a motivation to combine Jones with Among based on actual, specific evidence.

**II. DETAILED REPLY BY APPELLANT**

**A. Response to Examiner's Request to Board to Disregard Certain Portions of Appellant's Appeal Brief**

On page 2 of the Examiner's answer, the Examiner requests "that the Board disregard

the discussion starting with the second paragraph under the heading of Summary of the Invention on page one of the appeal brief through to the last paragraph on page 3.” The Examiner asserts that “[t]he information provided by the appellant in these paragraphs is not directed to the claimed invention.” The Examiner further states that “[t]he appellant addresses the drawings, especially Figures 1 and 12.”

The Examiner’s assertion and request are totally without merit. The Appellant has referred to specific drawings per the requirements of 37 C.F.R. § 41.37(c)(v). The Appellant has referenced the specification by page and line numbers in its concise explanation of the subject matter defined in each of the independent claims again, as per the requirements of 37 C.F.R. § 41.37(c)(v). The Examiner’s characterization that the discussion on pages 1-3 is not directed towards the invention is baseless. Indeed, the Examiner fails to provide any explanation or reasoning in support of her assertion. As the Board will determine from a careful reading of the passage in question, the Appellant explains in detail the necessity for the invention, the advantages provided by the Appellant’s invention, and the various aspects of the Appellant’s invention.

**B. Rejection of Claims 1-12 and 25-27 Under 35 U.S.C. § 102(b) as Allegedly Being Anticipated By Lynch.**

Regarding the 35 U.S.C. §102(b) rejections, it is well known that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). It is respectfully submitted that Lynch fails to disclose the claim feature of means for determining whether the user is a direct customer or a travel agent, as recited in, for example, independent claims 1 and 25 of the present application.

In the Examiner’s Answer, on page 22, the Examiner asserts that “[t]he appellant admits that in step 106 the system of Lynch determines the traveler, business entity and

agency association (page 18, last paragraph).” [Examiner’s Answer, page 22] Such is not the case. Nowhere on page 18 of the Appellant’s brief does the Appellant admit anything of the kind.

The Examiner asserts that “tailoring the information to be provided in the listing based on whether the user is a direct customer or a travel agent . . . are not recited in the rejected claim.” [Examiner’s Answer, page 26] This misses the point, however, as indicated by the following passage from the Appeal Brief:

Thus, each of the independent claims 1 and 25 includes a recitation corresponding to the determination of whether the user is a direct customer or a travel agent. This feature provides the present invention with the *advantage* that the reservation system can tailor the information to be provided in the listing based on whether the user is a direct customer or a travel agent. In particular, this feature enables the reservation system to take into account whether or not an agency commission will be paid.  
[Appeal Brief, page 11 (emphasis added)]

Thus, the Appellant merely points out, for informational purposes, the benefits of the Appellant’s invention. The question of whether “tailoring the information” is actually recited in the claim is irrelevant to its being an advantage of the claimed system. The Examiner continues, however, to mischaracterize the Appellant’s invention on the same page of the Examiner’s Answer.

The Appellant maintains that Lynch does not disclose the claim feature of means for determining whether the user is a direct customer or a travel agent. Step 106 of Fig. 3 of Lynch affirms this conclusion. In step 106, the system determines the traveler, business entity *and* agency associations. Nowhere does Lynch ever state that the system determines *whether* the user is a direct customer or a travel agency. Instead, Lynch’s system presumes that the traveler is associated with a business entity. Then – and only then – does Lynch’s system start differentiating the requirements of the user, business entity and travel agency. This is wholly different than the Appellant’s invention. At the outset, as recited in claim 1

(and claims 13 and 25), the system of the Appellant's invention determines *whether* the user is a direct customer *or* a travel agent. By contrast, Lynch presumes that the user is a travel agent. Furthermore, Lynch teaches away from the notion that an individual can use Lynch's system without the assistance of a travel agent. This teaching away is manifested by specific language found in Lynch's disclosure: "if the individual is a new customer, system 10 may prompt the travel agent to input information relating to the individual and his/her employer . . ." [Lynch, column 5, lines 41-43 (emphasis added)] Also, "[w]hen travel request information is received from a specific customer (individual and/or business entity) of the travel agency, the system automatically retrieves information relating to the customer from the database and also information relating to the travel agency." [Lynch, Abstract (emphasis added)] Taken together, these passages suggest a system that never contemplates being accessed directly by an individual traveler, much less a need to determine whether the user is a direct customer *or* a travel agent. Because Lynch fails to disclose the claim feature of means for determining whether the user is a direct customer or a travel agent, as recited in independent claims 1, 13 and 25, Lynch cannot anticipate these claims. The Appellant respectfully submit, therefore, that because Lynch fails to disclose all the claim features of Appellant's invention, the rejections of claims 1 and 25 under 35 U.S.C. §102(b) is improper and should be withdrawn.

In responding to this argument at page 28 of the Examiner's Answer, the Examiner cites a passage from Lynch, to support her assertion that Lynch discloses a system that receives travel request information, and then determines traveler, business entity and [travel] agency association. The cited passage is repeated below:

Processing network 12 may consist of a single processor or, as described below with reference to FIG. 2, a plurality of interconnected processors. Processing network 12 functions to run one or more software applications or modules, which can include a decision engine module 16. Decision engine module 16 functions to receive travel request information, such as a travel itinerary, input into system 10 and, in response, determines a preferred travel plan for each of a traveler, a business entity employing the traveler (if applicable), and the

travel agency.

[Lynch, col. 3, lines 12-21 (emphasis added)]

Despite the Examiner's argument, nothing in the cited passage stands for the proposition that Lynch determines an association between the traveler, business entity and the travel agency. Indeed, the Examiner provides neither analysis nor reasoning to support that assertion. The passage of Lynch appears to stand for the notion that the system determines a separate travel plan for each of the three entities.

Further, the Examiner states that the following passage from Lynch indicates that someone other than a travel agent, such as a traveler, could be the user: "A user of system 10, such as a travel agent, may input and receive travel-and-customer related information (including the travel plan generated by system 10), and system information, respectively, through any of the workstations 34." [Lynch, col. 4, lines 57-61 (emphasis added)] It may be the case that Lynch envisions someone other than the travel agent from being a user; but Lynch fails to disclose this. Further, even if Lynch did suppose that others could be users besides the travel agent, it is not necessarily true that that other user is a direct customer. For example, the other user could be the business entity, or someone else altogether.

Moreover, the fact that Lynch's disclosure does not preclude a possibility that someone other than a travel agent could be the user falls short of the enablement requirement. Nowhere in Lynch is there any discussion regarding the ability of Lynch's system to determine whether the user is a travel agent or a direct customer. It is well established that "[t]o anticipate, the reference must . . . enable one of skill in the art to make and use the claimed invention," *Transclean Corp. v. Bridgewood Services, Inc.* 290 F.3d 1364, 62 U.S.P.Q.2d 1865 (Fed. Cir. 2002) (emphasis added), and that "[t]o be prior art under [35 U.S.C.] section 102(b) the reference must put the anticipating subject matter at issue into the possession of the public through an enabling disclosure." *Chester v. Miller*, 906 F.2d 1574, 1577 n.2, 15 U.S.P.Q.2d 1333, 1336 n.2 (Fed. Cir. 1990) (emphasis added). The Examiner then further asserts that "the appellant's claim language does not preclude any or all of the

transaction steps from being made with the assistance of a travel agent.” [Examiner’s Answer, page 29] According to the M.P.E.P. § 2111, “[d]uring patent examination, the pending claims must be “given their broadest reasonable interpretation consistent with the specification.” *In re Hyatt*, 211 F.3d 1367, 1372, 54 U.S.P.Q.2d 1664, 1667 (Fed. Cir. 2000) (emphasis added). The Examiner again provides no reasoning or support for her assertion.

The Examiner further asserts that “all that claim 1 requires is that there be a means for determining whether the user is a direct customer or a travel agent, and that “Lynch has the means for making this determination.” However, according to M.P.E.P. § 2181, “in *Donaldson*, the Federal Circuit stated: ‘Per our holding, the ‘broadest reasonable interpretation’ that an Examiner may give means-plus-function language is that statutorily mandated in paragraph six. Accordingly, the PTO may not disregard the structure disclosed in the specification corresponding to such language when rendering a patentability determination.’ ” [M.P.E.P. § 2181, quoting *In re Donaldson Co.*, 16 F.3d 1189, 29 U.S.P.Q.2d 1845 (Fed. Cir. 1994) (emphasis added)] The Appellant respectfully suggests that by asserting that Lynch has the means for making the determination in question without referencing any corresponding structure or support, the Examiner’s argument fails this test.

Furthermore, in the balance of the Examiner’s discussion of the dependent claims, the Examiner fails to explicitly cite prior art that discloses the Appellant’s claim features, and instead relies on asserting that such claim features are “determined to be non-functional descriptive data not functionally interrelated with the structure of the system. Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability.” The Examiner cites *In re Gulack*, 703 F.2d 1381, 1385, 217 U.S.P.Q. 401, 404 (Fed. Cir. 1983) in support of this rationale.

The Examiner, however, offers no evidence or analysis as to what properly constitutes “non-functional descriptive data” that is “not functionally interrelated with the structure of the system,” or why she believes the Appellant’s claim features are “non-functional descriptive data,” that “is not functionally interrelated with the structure of the system.” Instead, the Examiner nakedly asserts that the Appellant’s claim feature “is determined to be”

non-functional descriptive data. The Appellant, however, respectfully submits that what the Examiner refers to as “descriptive data” is not at all “descriptive”, as defined in *In re Gulack*, but instead further defines the structure of the system. The Court in *In re Gulack* found that printed material on a band had a functional relationship because the band supported the digits, and “there is an endless sequence of digits – each digit residing in a unique position with respect to each other in an endless loop. Thus, the digits exploit the endless nature of the loop.” *In re Gulack*, at 405.

Similarly, there is a functional relationship between the travel parameters that include accommodation name, arrival date, departure date, departure location, and number of guests, and information relating to whether children are allowed at the named accommodation, as recited in dependent claims 2, 4-6, and 11, and the structure of the system of Appellant’s invention. The aforementioned travel parameter data is processed by the Appellant’s system, and this reflects data stored in a format usable by the PCs 100 and web server 110. This data is analogous to the programming that creates a new machine. *See, e.g., In re Alappat*, 33 F.3d 1526, 1545 (Fed. Cir. 1994), and *In re Lowry*, 32 F.3d 1579, 1583-84 (Fed. Cir. 1994) (“the claims require specific electronic structural elements which impart a physical organization on the information stored in memory.”). Similarly, as in *In re Lowry*, this travel parameter data imparts a physical organization to the reservation system as recited in claims 2, 4-6 and 11, because a listing is generated for one or more travel arrangements “in accordance with the travel parameters,” and the listing “include[s] pricing information associated with each respective travel arrangement.” Such a physical organization clearly constitutes a structural relationship, and as such cannot be “non-functional descriptive data.”

The Examiner further contends, again, that “an apparatus must be distinguished from the prior art in terms of structure rather than function alone.” [Examiner’s Answer, page 31 (emphasis added)] Again, the Examiner completely misinterprets the case law as cited by the M.P.E.P. § 2114. Again, the Examiner fails to adequately appreciate functional language and its role in claims.

According to the M.P.E.P.:



A functional limitation is an attempt to define something by what it does, rather than by what it is (e.g., as evidenced by its specific structure or specific ingredients). There is nothing inherently wrong with defining some part of an invention in functional terms. Functional language does not, in and of itself, render a claim improper. *In re Swinehart*, 439 F.2d 210, 169 USPQ 226 (CCPA 1971) (emphasis added).

A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. A functional limitation is often used in association with an element, ingredient, or step of a process to define a particular capability or purpose that is served by the recited element, ingredient or step.

[M.P.E.P. § 2173.05(g)(emphasis added)]

It is respectfully submitted that the Examiner, by asserting that “the system of Lynch is fully capable of processing and displaying a listing, travel parameters and pricing information,” without asserting or providing support illustrating where Lynch discloses such functional claim features, fails to adhere to M.P.E.P. § 2173.05(g).

In regard to claim 25, the Examiner asserts that this claim recites an intended-use, and therefore cannot distinguish the invention over the prior art. First, by virtue of this characterization, the Examiner again impliedly admits that Lynch fails to disclose the recited feature of a database for storing a plurality of travel arrangements and the associated pricing information. Second, as discussed above, the prior art must enable one of skill in the art to make and use the claimed invention. *See Transclean Corp. v. Bridgewood Services, Inc.* The fact that Lynch is able to store data does not enable one of ordinary skill in the art to make or practice the invention because Lynch does not disclose storing a plurality of travel arrangements and the associated pricing information.

**C. Examiner’s Answer in Response to Appellant’s Arguments regarding Scope of Claimed Invention, Section 10(B)(7) of the Examiner’s Answer**

The Examiner questions “that given the broadest reasonable interpretation of a direct customer, can a traveler not be a direct customer? Can a travel agent not be a direct customer?” [Examiner’s Answer, page 39] The answer has to be yes: a travel agent can not be understood to be the same as a direct customer. It is a well known claim construction tenet that “[w]here claims use different terms, those differences are presumed to reflect a difference in the scope of the claims.” *Forest Laboratories, Inc. v. Abbott Laboratories*, 239 F.3d 1305, 1310, 57 U.S.P.Q.2d 1794 (Fed. Cir. 2001). In the context of the present invention, a direct customer would be understood by one of ordinary skill in the art as being an actual traveler. By contrast, a travel agent would be understood as being a professional whose job it is to make travel arrangements on behalf of the traveler. A direct customer cannot be both a traveler and a travel agent; if that were the case, then the scope of the claim would be severely limited.

**D. Rejection of Claims 1-28 Under 35 U.S.C. § 103(a) over Jones in view of Among**

In the Examiner’s Answer, the Examiner disagrees with the Appellant’s arguments regarding “how combining Jones and Among would change the principles of operation of Jones . . .” [Examiner’s Answer, page 42] Reference is made to page 25 of the Appellant’s Appeal Brief. Jones is a goal oriented travel planning system. Jones’ system provides a complete travel itinerary for a traveler, including all transportation and accommodations. In addition, Jones provides further goal oriented planning such as restaurants, entertainment, activity information, car rental information, ground transportation if car rental information is not provided, and event information, among other types of information. However, Jones does not include any disclosure relating to costs or travel agents. Therefore, the Appellant submits that any combination of Jones with the system of Among, which, as the Examiner points out, discloses “special pricing and automatically applying a rate if qualified . . . tracking of sales by an individual or entity, sending confirmation messages to travel agent 605 and the buyer (606) and the ability to enroll online in an incentive program . . .”, [Examiner’s Answer, page 43], would completely and irrevocably change the principle of operation of Jones. In accordance with M.P.E.P. § 2143.01(VI), the proposed modification cannot change the

principle of operation of a reference. “If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” M.P.E.P. § 2143.01(VI), citing *In re Ratti*, 270 F.2d 810, 123 U.S.P.Q. 349 (C.C.P.A. 1959). For this reason, the Appellant submits that the combination of Jones and Among is improper. However, even if Jones and Among are combined, there is no disclosure in the combination of references relating to the recited claim feature of a means for determining whether the user is a direct customer or a travel agent.

In the Examiner’s Answer, the Examiner fails to respond to the Appellant’s query to point out in Among where means for determining whether the user is a direct customer or a travel agent is taught, instead simply repeating the same passage as cited in the final office action. Further still, the Examiner fails to respond to the Appellant’s assertion that there is simply no mention whatsoever of means for determining whether the user is a direct customer or a travel agent. The reason the Examiner fails to respond to the Appellant’s assertion is that Among fails to disclose this recited claim feature.

On page 45 of the Examiner’s Answer, the Examiner includes a new ground of rejection, asserting that “a login is a form of gaining access to a specific computer, a program, or a network by identifying oneself with a username and a password. Thus, each time one logs into a system, the system identifies the person logging in, whether it be direct customer or a travel agent.” The Appellant respectfully responds that “identifying a person that logs in” is not the same as “determining whether the user is a direct customer or a travel agent,” because a username and a password typically do not indicate whether the user is a direct customer or a travel agent.

Regarding the rejection of claims 2 and 14, the Examiner points to Among, FIG. 4, items 401-405, as indicating that the buyer can select desired components, including the airline price. Respectfully, the Examiner has missed the point of the claim: Claim 2 states:

2. A reservation system according to claim 1, wherein said listing includes a plurality of room accommodations, pricing information for the plurality of room accommodations, and pricing information for the plurality of room accommodations with one or more categories of airfare.

By contrast with claim 2, the cited section of Among does not disclose a generated listing, but a selection point by the buyer of different options, including airline pricing data.

Regarding the rejection of claims 4 and 16, the Examiner again fails to provide a citation relating to the purported disclosure by Jones and Among of the claim feature of the pricing information being associated with the one or more categories of airfare being provided without regard to availability of seating. Thus, the Examiner's attempt to render claims 4 and 16 obvious fails, because it is well known that to establish a *prima facie* case of obviousness, the prior art must disclose or suggest all of the limitations of the claims. See *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Regarding the rejection of claims 7 and 19 under 35 U.S.C. § 103(a), the Examiner asserts that Jones discloses the claim feature of means for accessing an associated computer network to determine the availability of seating, after selection of a listed travel arrangement. [Jones, paragraphs [0044]-[0045]] Respectfully, Jones merely teaches picking a preferred flight and seat, but fails to disclose determining the availability of seating, after selection of a listed travel arrangement. Jones makes no mention whatsoever of any listed travel arrangements. Because the cited combination of references fails to disclose each and every claim feature as required, it is respectfully submitted that the rejection of claims 7 and 19 under 35 U.S.C. §103(a) is improper and should be withdrawn.

Regarding the rejection of claims 12 and 24 under 35 U.S.C. § 103(a), the Examiner asserts that Jones teaches all the claim features except wherein when the user is a travel agent, the net amount of money due is reduced by an amount of an agency commission. The Appellant respectfully disagrees, and refers the Board to the pages 31 and 32 of the Appeal Brief. Further, however, the Examiner asserts that:

prices disclosed in Among would have reduced the net amount of money due by the amount of a commission . . . Thus, common sense dictates that it would be necessary for the net price presented to the travel agent to be reduced by the amount of travel agent commission.  
[Examiner's Answer, page 50 (emphasis added)]

However, all of the prior art references used to support a rejection based on obviousness must teach all the claim features of the claim in question. If the claim feature is not explicitly taught, the Examiner cannot rely on what the reference "would have" disclosed, or what "common sense dictates." Among neither teaches nor suggests that the net amount due would be reduced by a commission, and indeed, it is possible that the system of Among could manage and provide commission payments in a completely different manner. For example, similar to popular rebate offers, the travel agent could purchase the ticket at full price and then the commission be provided separately. Therefore, because the feature is not actually disclosed in Among, the claim feature cannot be said to be a necessary characteristic of the Among system.

In regard to independent claim 28, the Examiner impliedly admits that Jones fails to disclose at least the claim feature of when the user is a travel agent, the net amount of money due is reduced by an amount of an agency commission [in the confirmed travel arrangement]. The Examiner then asserts a similar rationale in regard to independent claim 28 on pages 52 and 53 of the Examiner's answer as she did in regard to dependent claims 12 and 24. The Examiner states that:

it would have been obvious to reduce the net amount of money due by the amount of an agency commission so that the purchaser is not charged more by going through a travel agent because the travel agent takes the amount of money due and adds a commission payment.  
[Examiner's Answer, pages 53, 54 (emphasis added)]

In regard to the Examiner's assertion of what may or may not be "obvious," the Examiner and the Board are reminded that it is entirely improper for the Examiner to assert an obviousness rationale for the purpose of fabricating a claim feature in the prior art where

none actually exists. Again, in regard to an obviousness rejection under 35 U.S.C. § 103(a), the prior art references must teach all the claim features. *See In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

In the Examiner's Answer, on page 51, regarding the rejection of claims 25-27 under 35 U.S.C. § 103(a), the Examiner fails to disclose where in Jones or Among is taught the claim feature of determining whether the user is a direct customer or a travel agent.

Regarding again the rejection of claim 28 under 35 U.S.C. § 103(a), the Examiner asserts that "Among further discloses in addition to sending confirmation to the vendors 602, a confirmation message is sent to any travel agent 606 that booked the package and to the buyer [0051]." [Examiner's Answer, page 54] Paragraphs [0049] through [0051] of Among are shown below.

[0049] FIG. 6 illustrates a confirmation process according to a preferred embodiment of the present invention. Once the credit card information is input and the buyer has purchased the final option 600, a match is done by the central server that receives the buyer's response 601 to ensure that the credit card holder's name and address match the account, and if an approval is returned for the full amount, the system automatically completes the purchase by removing funds from the buyer's account.

[0050] A confirmation message (e.g., email) is instantly sent 602 to all vendors that have a suboption corresponding to a selected component in the final option. The confirmation message verifies that a reservation was made and includes the buyer name, the products or services purchased, a tracking number, and the record locator of the air component, if any.

[0051] In addition to sending confirmation messages to the vendors 602, a confirmation message (e.g., email) is also sent to any travel agent 606 that booked the package or suboptions of the final option, and to the buyer 604,,607, if the buyer's contact information (e.g., email address) is available. A follow-up daily reconciliation message (e.g., email or fax) is also sent to all vendors at the end of each day re-listing all bookings of

suboptions selected as part of a final option made that day as a verification.

[Among, paragraphs 49-51 (emphasis added)]

The Appellant respectfully submits that Among fails to disclose the claim feature of “generating a confirmed travel arrangement without receipt of payment for the travel arrangement, . . . ; and forwarding, to a tour operator’s reservation system, the confirmed travel arrangement,” as recited in claim 28. Instead, as the above paragraphs from Among illustrate, Among specifically requires that payment be made and confirmed (funds are removed from the buyer’s account). Among’s system of sending a confirmation message to the vendor 602 thus depends upon acknowledgment of payment, and this is completely different from the feature of the Appellant’s invention.

Thus, the Appellant respectfully submits that Among and Jones, taken either alone or in combination, fail to disclose at least the claim feature of “generating a confirmed travel arrangement without receipt of payment for the travel arrangement, . . . ; and forwarding, to a tour operator’s reservation system, the confirmed travel arrangement,” as recited in independent claim 28. Because the cited combination of references fails to disclose each and every claim feature as required, it is respectfully submitted that the rejection of claim 28 under 35 U.S.C. §103(a) is improper and should be withdrawn.

### **III. CONCLUSION**

In view of the above, the Appellant respectfully submits that the claims of the present application are not anticipated by Lynch under 35 U.S.C. § 102(b), and neither are the claims rendered unpatentable by the combination of Jones and Among under 35 U.S.C. §103(a). Any remaining points raised in the Examiner’s Answer are believed to be adequately addressed in Appellant’s Appeal Brief.

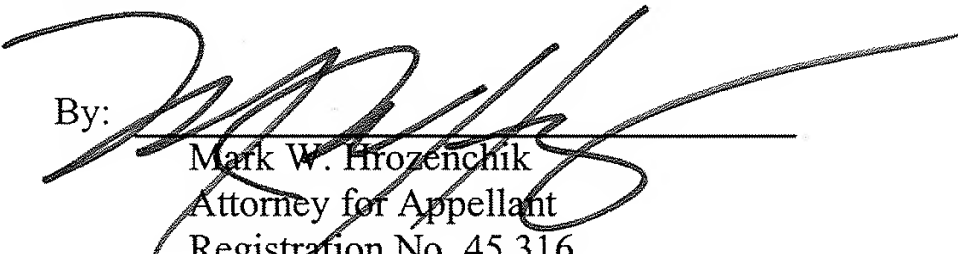
For the reasons set forth in the Appeal Brief, as well as the additional reasons presented herein, the rejections of the claims are not properly founded in the statute, and should be reversed.

Appellant's undersigned attorney may be reached in our Washington, D.C. office by telephone at (202) 625-3500. All correspondence should continue to be directed to the address given below.

Respectfully submitted,

KATTEN MUCHIN ROSENMAN LLP

By:



Mark W. Hrozenchik  
Attorney for Appellant  
Registration No. 45,316

Patent Administrator  
KATTEN MUCHIN ROSENMAN, LLP  
1025 Thomas Jefferson St., NW, #700  
Washington, DC 20007-5201  
Tel.: (202) 625-3500  
Fax: (202) 298-7570  
Customer No. 27160